

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

ANTHONY SMITH and FLYING A.J.'S
TOWING COMPANY, LLC,

Plaintiffs,

v.

JOHN WILSON and TOWN OF
BELOIT,

Defendants.

ORDER
10-cv-062-wmc

The court held a continuation of a final pretrial conference yesterday, April 21, 2011, during which the court decided a number of motions in limine for reasons stated on the record and ordered the filing of additional documents. Moreover, the court has now reviewed proposed deposition designations for Dr. Kenneth Robbins and Judge Kenneth Forbeck. Accordingly,

IT IS ORDERED that:

- 1) Defendants submitted numerous, individually-numbered motions in limine (dkt. #140), a number of which the court ruled on in its previous order (dkt. #191).
 - a. Plaintiffs previously represented that Willis Abegglen would not be called as a witness, and, accordingly, the court granted defendants' motion 15 to exclude his testimony. Given certain developments, plaintiffs now may call Willis Abegglen. The court, therefore, RESERVES on defendants' motion 15.
 - b. Motion 25 concerning testimony of the July 13, 2010 letter from defendants to plaintiffs is DENIED.
 - c. The court RESERVES on motions 32 and 33 concerning testimony about the no confidence vote and the union memo. Ex. 6 (the union memo) and Ex. 7 (the no confidence vote) have both been withdrawn.

- d. Defendants' motion 34 to exclude the testimony of Donald Frankenfeld is DENIED. Mr. Frankenfeld can testify as to the charts he produced. The issues raised by defendants go to his assumptions, and defendants are free to point out errors in the charts and problems with his underlying data. The court RESERVES on defendants' motion 53.
 - e. The court RESERVES on motion 35 to exclude the testimony of Dr. Wilbert Miles pending submission of revised designations from plaintiffs and defendants' counter-designations. Defendants' motions 50, 51, and 52 concerning limitations to Dr. Miles' testimony are GRANTED.
 - f. The following motions are GRANTED without objection: 36, 40, 41, 55, and 56.
 - g. Defendants withdrew the following motions: 37, 39, 42, 43, 44, 47, 48, and 49.
 - h. Defendants' motion 38, concerning plaintiffs' claims to lost wages or profits after July 1, 2010, is GRANTED IN PART AND DENIED IN PART. Any evidence of lost profits from a towing arrangement with the Town of Beloit after July 16, 2010 is excluded.
 - i. Defendants' motion 45 is GRANTED IN PART AND RESERVED IN PART. Any evidence of reputational harm is excluded as to liability. The court RESERVES as to damages.
 - j. Defendants' motion 46 concerning testimony about Smith's inability to work on cars is GRANTED.
 - k. Defendants' motion 54 concerning Smith's testimony about stress on marital relations is GRANTED IN PART AND DENIED IN PART. The motion is granted as to a loss of consortium claim but otherwise denied.
 - l. The court reserves on defendants' motion 10 concerning testimony of plaintiffs expert Dr. Christopher Chapman. The court will hear oral argument on this motion during tomorrow's telephonic conference.
- 2) The court has reviewed the parties' objections to the videotaped deposition testimony of Dr. Kenneth Robbins and Judge Kenneth Forbeck. The court has attached to this order its rulings on the objections. The court did not rule on objections where neither party included the testimony subject to the objection in its designations. Defendants shall arrange for the appropriate edits to the

videotaped depositions consistent with the court's rulings on these objections. To be clear, the videotaped depositions should only consist of questions and answers between counsel and witnesses, and should exclude (a) any testimony for which the court has sustained an objection and (b) any objections and colloquies between counsel even if unintentionally still part of the court's designations. By end of business day Monday, April 25, 2011, defendants shall provide plaintiffs with a copy of each edited videotaped deposition for plaintiffs' review to insure compliance with the court's order.

- 3) Defendants shall provide counter-designations for the deposition of Dr. Wilbert Miles by 12:00 p.m. Friday, April 22, 2011.
- 4) Plaintiffs are to provide defendants with proposed redactions of Ex. 531 by 12:00 p.m. Friday, April 22, 2011.
- 5) In the April 19, 2011 order, the court directed plaintiffs to brief defendants' contention that federal funding must be tied to employment to support a Title VI claim. Instead, the court now directs defendants to brief this contention or withdraw their argument by Friday, April 22, 2011.
- 6) The parties are to provide witness lists for the next day to opposing counsel and to the court (wiwd_wmc@wiwd.uscourts.gov). Plaintiffs shall provide the list of Monday's witnesses by Sunday, April 24, 2011 at 12:00 p.m. For all other days, the parties shall provide a list of witnesses for the next day by 6:00 p.m. the night before.
- 7) The court will continue the pretrial conference on Friday, April 22, 2011 at 4:00 p.m. via telephonic conference.

Entered this 21st day of April, 2011.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge